SADC Road Sector: a Holistic Approach to Policy and Legal Reform

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Since the early 1990s legal and institutional reform in the roads sector has received more attention in the SADC region. This was prompted by the recognition that efforts to maintain and rehabilitate the region's road infrastructure would not deliver sustainable results unless accompanied by wide-ranging institutional strengthening, improved financing arrangements, and administrative reforms.

Under the influence of the World Bank's Road Maintenance Initiative (RMI), Zambia, Tanzania, and Lesotho were among the first SADC states to reform roads institutions and improve funding arrangements. A majority private sector board was established in Zambia in 1994, along with a road fund, primarily funded from the fuel levy and road user charges. In the same year, Tanzania established a Roads Board whose functions were largely advisory. The board also received limited authority for the road fund, which was established as a special account by a resolution of Parliament. Lesotho established a Roads Board in 1996 (unfortunately also with only minority private sector representation) to oversee a road fund, which had already been created the year before.

Regional benchmark
The technical unit (TU) of the SATCC prepared Model Legislative Provisions on Road Network Management and Financing (MLP) to translate the words of the SADC Protocol into practical and visible achievements. The MLP aim to assist those states experiencing constraints in implementing policy and legal reforms by providing a regional benchmark which can guide national reform processes. A more fundamental objective is to encourage regional cohesiveness in reform approaches and to ensure that all states ultimately derive comparable benefits in terms of improved and adequately financed road services. The MLP seek to avoid a narrow focus on "ownership" in roads by road users, which in early reform examples had translated only into limited participation by individual private sector members in road financing and operational decisions. Accordingly, the MLP emphasize broad-based "entitlement" of road users, both as members of roads institutions and as general interest groups with the right to influence decision-making. The MLP were adopted as a regional guideline for legal reform by the SADC Committee of Ministers of Transport in June 1999.
Implementation reality dictates a gradualist approach

Current reform initiatives should be viewed within a sea-of-change of policies governing the roads sector since the 1960s. Given the extent of the policy change, it is not surprising that the implementation of reforms has itself been a dynamic process. An analysis of early reforms shows that it has been easier to set up dedicated financing arrangements than to introduce extensive institutional and managerial reforms. For example, reforms in Lesotho and Zambia concentrated almost exclusively on improving funding arrangements. While this ensured limited improvement in certain areas—e.g., securing improved funding flows—other aspects of reform were neglected—e.g., developing planning and executive capacity to use additional funds to improve services.

The depth of the changes required have prompted most SADC governments to adopt a gradualist approach. This avoids focusing reforms only on a single factor, such as improving financing, but does introduce a multi-factor approach that addresses all reforms holistically. However, because of capacity limitations, most SADC governments find it difficult to undertake multi-focused implementation concurrently. In view of this reality, the gradualist

Since the 1960s road operations were generally centrally planned activities undertaken by government roads departments using force account. Funding relied on treasury allocations and increasingly on donor contributions. There was no clear fixed road price and little, if any, contribution by road users. Planning focused on capital expenditure with little consideration of future maintenance needs. Road users had no influence on management or spending priorities. In the 1990s a reversal was initiated when governments adopted large scale liberalization, divestiture of public ownership, and public sector reform as policy objectives, which also took place in the roads sector. However, the impacts of reforms in the roads sector in terms of improved service delivery are still modest and are now an area of critical need.
SATCC undertakes major policy reform initiative

In parallel with early reform initiatives, the Southern Africa Transport and Communications Commission (SATCC)—the transport arm of SADC—launched a major initiative to introduce wide-ranging reforms across all transport sectors. This initiative resulted in the signature of the Protocol on Transport, Communications and Meteorology by the SADC heads of state and government in August 1996. The Protocol sets out a broad framework of regional cooperation between the SADC member states in the fields of transport, communications, and meteorology infrastructure and services. In the roads sector, the Protocol commits the SADC states to establish autonomous—and accountable—national roads authorities, representing both the public and private sectors. A further goal is to develop and implement cohesive road funding policies that identify adequate sources of funding for roads, introduce the user-pays principle, and ensure a stable flow of funds for roads management.

This included establishing a majority private sector board with significantly enhanced powers. During 1999 Mozambique passed legislation that incorporated the major thrusts of the MLP in both operational and financing issues. To a large extent, the MLP have now been accepted within SADC as the authoritative guideline for reform of the roads sector. However, the assessment of implementation progress shown in Figure 1, is based purely on an analysis of current reform legislation. It does not reflect the degree of practical implementation of reforms, e.g., while Mozambique has a high degree of compliance with the MLP, this compliance is theoretical until its draft legislation is enacted and implemented.

Reforms still incomplete

Despite the progress already made, most states still have a long way to go in fully implementing the comprehensive range of institutional, technical, financial, and monitoring mechanisms introduced by the MLP. The following features describe the current state of road sector reform in the SADC region:

- All SADC states have accepted the need for and urgency of broad-based fundamental reform in line with the MLP policy guidelines. While all states have not moved at the same pace, all have either planned, introduced, or progressed to advanced stages of policy and legal reform. In four states (Angola, Botswana, Swaziland and Zimbabwe), reform legislation has not yet been passed, although draft legislation is under preparation in the latter two. Reform legislation has been passed and is being implemented in six states (Lesotho, Malawi, Mauritius, South Africa, Tanzania and Zambia), while legislation has been passed but not yet implemented in Namibia and Mozambique (Figure 1).

- None of the SADC states have yet adopted reform legislation that fully implements the comprehensive change management envisaged by the MLP.

In the early cases, the urgent need for change resulted in reform measures—for example, financing rather than broader managerial reforms, introduced via secondary legislative instruments such as ministerial orders or parliamentary resolutions. While the reforms could be implemented rapidly, the choice of instrument limited the po-
tential range of reforms and also made them less durable.

States who were early reformers—Lesotho and Zambia—have been overtaken by many others in the breadth and depth of reforms. Several factors explain this. We have already referred to the strong emphasis initially placed under the RMI on securing adequate funding. The comprehensive entitlement of road users, as envisaged in the MLP and propagated in this note, was not an initial focus and is more prevalent in later reform initiatives, for example, in Mozambique. Proportionately less attention was given to the need for management and technical reforms. Also, national authorities did not have the benefit of being able to base their managerial, operational and technical reforms on a regionally appropriate model, such as the MLP.

In some cases, national circumstances have influenced the direction of reforms. This has been true in South Africa, where a Roads Board and road fund had existed for some time, although the road fund was subsequently abolished when it ran up huge surpluses. More recently, the (national) Roads Department was commercialized as part of a broader process of commercializing transport functions, but the road fund was not reinstated.

Primary focus on good governance
The MLP broadens the scope of road sector reforms by emphasizing good governance processes along the entire chain—linking planning, execution, and monitoring of road financing and operations. Ideally, the MLP’s approach should have formed part of wider public sector reform initiatives through overarching legislation addressing all aspects of public financing management, especially as many of the principles would find application in other sectors—e.g., other public works, health, and education. While SADC states have generally not followed this approach, it is worthwhile introducing public finance principles that coincide with international best practice dealing with impact on other sectors.
MLP as a framework for change management
The MLP introduce a comprehensive framework for change management—which facilitates a gradualist approach aimed at securing entitlement of road users in the broadest sense, a concept which this note strongly supports. If introduced correctly, entitlement translates into true empowerment of and appropriation by road users, effective planning and efficient financing, and ultimately improved service delivery, as illustrated in Figure 2:

The main features of the management framework are:

- Road users and other stakeholders are entitled to become full partners in managing road financing and operations. This entitlement is intended to create a strong sense of ownership in both the process and the assets, thereby securing a broad national consensus on roads policy. Ownership will be apparent from the degree to which stakeholders share in responsibilities and participate in the management process. Participation occurs at different levels, for example, through inputs from the general public or through the quality of the contributions by private sector board members to decision-making.

- Targeted and effective planning will be the primary management tool to ensure that reforms translate into improved roads, delivered efficiently and effectively. Comprehensive planning for roads management and financing will help overcome past fragmentation in planning between the different roads authorities. All roads authorities (national, provincial, and local) must prepare workable and effective road network management plans that will make up the nation’s roads program. Plans should detail planned and ongoing projects, available funding, terms of contracting out or using own resources, etc. Similarly, a financial plan must determine sources of revenue, adequacy and stability of funding, and use of additional or alternative funding sources. Mozambique is the most advanced in this respect, followed by Namibia and South Africa.

- Mechanisms to secure effective funding address past problems related to a lack of a dedicated revenue source, unreliable funding flows, and an unclear road price. As revenue sources are identified, procedures to set and adjust the road price can be applied, thereby imposing a hard budget constraint. At the same time, this process is separated from management planning so that a distinction is made between road management and financing. Once again Mozambique’s legislation adheres closest to the MLP standard, followed by South Africa and Namibia.

- Extensive requirements for technical and financial performance auditing (both independent and in-house) are supported by effective measures to evaluate audit results and introduce corrective action if necessary. In this respect, Namibia and Mozambique closely adhere to the MLP standard, with South Africa and Tanzania partially compliant. However, in most states further legal reforms are required to introduce adequate performance monitoring frameworks.

The remaining challenges
Undoubtedly, all SADC states share a consensus on the need for policy and legal reform as embodied in the MLP. However, SADC has merely initiated a process by adopting the MLP as a basis for achieving regional policy and legal harmonization.

A comprehensive legal framework is essential to thorough and durable reforms, but is no guarantee of successful implementation. Full ownership will occur only when all core reform elements, as illustrated in Figure 2, have been implemented. Thus, there should not be excessive expectations from or reliance on the legal reform process. Other important measures must take place at the levels of public administration, and human resource development to ensure that the reforms deliver results. This is apparent from practical examples, such as Mozambique, which has recently adopted a comprehensive legislative package, but suffers from severe constraints in service delivery. In contrast, Botswana, which has not yet embarked on fundamental reform, still manages to deliver much better roads. The challenge that all SADC governments face is to ensure that there is a comprehensive mobilization of reforms, effective implementation that translates into improved delivery of services, and that the whole process is monitored to ensure that projected targets are achieved. Only then will the full potential of the MLP be realized.